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**UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

In re	)	No.	01-30923 DM
PACIFIC GAS & ELECTRIC COMPANY,	)	Chapter	11
Debtor.	)	[Not set for hearing]	

**UNITED STATES TRUSTEE'S**  
**OBJECTION TO DEBTOR PACIFIC GAS AND ELECTRIC COMPANY'S**  
**APPLICATION TO EMPLOY DELOITTE & TOUCHE, LLP**

The United States Trustee submits this objection to *Debtor Pacific Gas and Electric Company's Application to Employ Deloitte & Touche, LLP* (the "Application"). The Application should not be granted because (1) Deloitte & Touche ("Deloitte") holds a pre-petition claim of more than \$1.4 million against the estate; (2) the Application does not require notice and a hearing for compensation of services; (3) Deloitte is not disinterested because it continues to work for debtor's parent ("PG&E Corp.") and its other subsidiaries, the National Energy Group subsidiaries (collectively, "NEG").

**Argument**

The United States Trustee is responsible for, *inter alia*, supervising "the

administration of cases . . . under chapter . . . 11" of the Code and is given discretion to file comments with the court with respect to applications for employment of professional persons. 28 U.S.C. § 586(a)(3). Professionals seeking employment by a bankruptcy estate pursuant to 11 U.S.C. § 327(a) must be approved in advance by demonstrating they have no conflict of interest and are disinterested. *Neben & Starrett, Inc. v. Chartwell Financial Corporation (In re Park-Helena Corp.)*, 63 F.3d 877, 881 (9<sup>th</sup> Cir. 1995); *Rome v. Braunstein*, 19 F.3d 54, 57 (1<sup>st</sup> Cir. 1994). Section 327 "serve[s] the important policy of ensuring that all professionals tender undivided loyalty and provide untainted advice and assistance in furtherance of their fiduciary responsibilities." *Rome v. Braunstein*, 19 F.3d at 58; *In re Arochem Corp.*, 176 F.3d 610, 621 (2d Cir. 1999).

The United States Trustee has the following objections to the Application:

1. Deloitte Has Not Disclosed It Is Owed \$1.4 Million; If It Holds a Pre-Petition Claim, It Cannot Be Employed

Debtor's schedule "F" lists all unsecured creditors. Debtor identifies the following claims held by Deloitte:

Deloitte & Touche 400 Capital Mall Trade Payable	\$66,500.00
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Deloitte & Touche 400 Capital Mall-Suite 2000 P.O. Box 6000 Sacramento, CA 94160-2427 Professional Services Contract	(UNKNOWN)
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Deloitte & Touche LLP P.O. Box 60000 San Francisco, CA 94160-2427 Corporate Adjustment Tax Consulting	\$1,469,648.00
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Deloitte & Touche LLP P.O. Box 60000 San Francisco, CA 94160-2427 Corporate Adjustment FAS 133 Consulting	\$35,000.00
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See Request for Judicial Notice in Support of Objection to Employment of Deloitte & Touche, LLP, Exhibit "A".

1 These claims were not disclosed by Deloitte as they should have been consistent  
2 with 11 U.S.C § 329 and Fed. R. Bankr. P. 2014(a). Under *In re Siliconix, Inc.*, 135 B.R.  
3 378, 380 (N.D. Cal. 1991), Deloitte cannot be employed if it is a creditor of the estate.

4 2. Deloitte Should Comply with Bankruptcy Rules For Compensation

5 \_\_\_\_\_ Deloitte seeks approval of an \$855,000 flat fee contract with the estate for auditing  
6 services. Debtor attaches two decisions from the district of Delaware to support the notion  
7 other courts have approved flat fee contracts, presumably without requiring applications for  
8 compensation. Neither of the decisions supports that conclusion. The cases attached to  
9 the Application only say the court will accept a simplified fee application for audit services  
10 *together with the ordinary applications* the firms are filing.<sup>1/</sup> Neither of the decisions can be  
11 said to waive fee applications, as Deloitte wishes.

12 Even if the procedures authorized in Delaware permitted the wholesale waiver of fee  
13 applications, a contestable point, the court should not accept this invitation. The Court  
14 promulgated its *Guidelines for Compensation of Professionals and Reimbursement of*  
15 *Expenses* (the “Guidelines”) under authority of the B.L.R. 1001-1. The Guidelines require  
16 professionals to keep records of their time, make a detailed statement to obtain  
17 compensation, and provide their clients with copies of their applications with time for  
18 comment and review. They require a written explanation of what was accomplished, a  
19 description of the benefit conferred on the estate and a record of expenses incurred. The  
20 Guidelines assist the court (and the parties in interest) by requiring more or less  
21 standardized requests for compensation. This practice is supported by Bankruptcy Code  
22 §§ 330 and 331 and Federal Rules of Bankruptcy Procedure 2002(a)(6) and 2016(a), all of  
23 which compel the bankruptcy court to oversee carefully professional compensation.

24 3. Deloitte Seeks a Flat Fee of \$855,000 for Audit Services but Presents no  
25 Evidence This Is a Reasonable Fee

26 Despite asking for a flat fee of \$855,000, neither debtor nor Deloitte provides any

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27 <sup>1/</sup> In *Harnischfeger Indus.*, Case No. 99-2171, the court ordered “PwC is authorized to briefly summarize  
28 the Services in PwC’s monthly fee applications.” (page 2). In *Owens Corning*, Case Nos. 00-3837 through 00-  
03854, the court ordered “[Arthur Andersen] shall submit fee applications . . . but shall be permitted to submit a  
brief description of services rendered in lieu of detailed billing statements with respect to Audit Services.”

evidence the rate is reasonable. Section 328(a) permits the court to set a rate in advance, but only if that rate is on “reasonable terms and conditions of employment . . .” 11 U.S.C. § 328(a). There is no evidence about what was charged in the past, what a comparable audit would cost, or how much time and effort are involved in such an audit. Without evidence to support the rate, the court cannot find the rate is “reasonable.”

4. Deloitte’s Professional Help Should Be Limited to Audit Work

Deloitte represents debtor, PG&E Corp. and NEG on a variety of matters. The relationship between debtor, PG&E Corp. and its sister corporations may be the subject of inquiry over upcoming months. Among other things, it is a matter of public record the California Public Utilities Commission ordered financial reviews of California’s power utilities and their relationships with their parent holding companies. Based upon the findings of a review of debtor and PG&E Corp. conducted by the Barrington Wellesley Group, Inc., the CPUC issued the April 3, 2001 *Order Instituting Investigation* of debtor, PG&E Corp. and PG&E Corp.’s other subsidiaries. See *Request for Judicial Notice in Support of Objection to Employment of Deloitte & Touche, LLP*, Exhibit “B” (and in particular, Exhibit “A” to that order).

Debtor is entitled to “disinterested” advice from its professionals. Deloitte should not be permitted to offer advice to debtor regarding financial transactions between debtor, its parent or its sister corporations when Deloitte is already employed by those non-bankrupt companies, each of whom has a distinct and separate interest from the bankruptcy estate. Debtor should only be permitted to employ Deloitte for audit work. This is consistent with debtor’s contention this engagement promotes “efficiency” (Application 3:7). It will ensure debtor receives complete, unbiased advice from its professionals.

For the foregoing reasons, no order of employment should issue.

Date: May 25, 2001

Patricia A. Cutler  
Assistant United States Trustee

By:

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Attorneys for United States Trustee